

as not to set a dangerous precedent that others might follow. Always it is to recognize that for better or worse our actions shape the rules by which the international system operates. The rule of law is a fragile thing. And through our actions, we either strengthen or erode it.

If you think this is merely a theoretical concern, let me share with you an article from last Sunday's New York Times. It is by Stephen Sestanovich, a senior fellow at the Council on Foreign Relations and professor international diplomacy at Columbia University.

The article is entitled, "Putin Has His Own Candidate for Pre-emption." It described the efforts of senior Russian officials to co-opt the rhetoric of the Bush Administration in their war of intimidation against the neighboring Republic of Georgia, where some Chechen fighters have taken refuge. Allow me to quote a few lines:

"On the eve of President Bush's Sept. 12 speech to the United Nations on Iraq, Mr. Putin wrote Secretary General Kofi Annan charging that Georgia's passivity toward Chechen fighters on its territory violated Security Council resolutions. Russia might therefore have to act unilaterally. The chief of Russia's general staff insisted that Mr. Shevardnadze was 'in no way' different from Mullah Omar of the Taliban."

"The Russian defense minister announced that no United Nations vote was needed to attack Georgia. One Russian newspaper published military plans to occupy all of Georgia—and thereby 'dictate the terms' of its future existence as a state. The headline: 'Pre-emption Moscow-Style.'"

Such are the dangers of unilateral assertions of power by the leader of the free world. Such are the risks that other nations with aggressive intentions may use stale evidence and ill-defined allegations to settle local grievances.

This is not to deny that there are times when it is necessary to strike first against an enemy who poses a "clear and present danger" to the safety and security of the Nation. The Constitution is not a suicide pact, as Justice Jackson famously said. And the same is true of the international legal order. We are not compelled to stand by and allow ourselves to be attacked before we can lawfully take action.

But any nation that engages in the preemptive use of force bears a heavy burden of showing that its actions were justified by the nature of the threat confronting it.

The principles that apply were formulated by none other than Daniel Webster, who was Secretary of State when the British launched a surprise attack on an American ship, the *Caroline*, in 1837.

Webster set forth the two conditions that must exist: first, the need for self-defense must be "instant, overwhelming, and leaving no choice of means and no moment for deliberation." And second, the degree of force used must be proportionate to the threat.

The resolution before us permits the President to take us into war without satisfying either of these requirements. It imposes no obligation upon him to show that the danger is truly immediate and the use of force truly necessary. Indeed, it speaks of a "continuing threat," which suggests an ongoing situation of indefinite duration. And it imposes no requirement that U.S. military actions be measured or proportionate to the threat we face.

In short, the resolution offers no rationale for the exercise of its broad grant of authority. Nor has the President provided one.

Last night, President Bush presented his case for a preemptive military strike against Iraq. I studied his speech with care, hoping that he would set forth clear and convincing evidence of the threat he perceives.

The speech offered ample evidence that Saddam Hussein is a bloodthirsty tyrant who has terrorized his own people and endangered his neighbors.

The speech offered ample evidence that Saddam Hussein has defied Security Council resolutions for 11 years by continuing to develop weapons of mass destruction.

And the speech made clear—in case anyone doubted it—that Saddam Hussein is deeply hostile to American interests.

What the speech failed to demonstrate is that Saddam Hussein poses a threat to America or vital U.S. interests that—Webster's words—is "instant, overwhelming, . . . leaving no choice of means and no moment for deliberation."

In fact, it demonstrated just the opposite. The President did not say, "Saddam Hussein presents an imminent threat to the United States." He said, "The danger is . . . significant and it only grows worse with time."

That is an argument for containment. It is an argument for coercive measures, including unconditional inspections, disarmament, and the freezing of assets. It may even be an argument for sanctions. But it is not an argument for launching an unprovoked military attack.

NUCLEAR WEAPONS

The President stated that the Iraqi regime has continued to pursue the development of nuclear weapons, and could one day soon be in a position to threaten America or the Middle East. He cited the Cuban missile crisis as precedent for a preemptive strike to contain that danger.

But the missile crisis involved the imposition of a naval quarantine to interdict the delivery of nuclear missiles capable of hitting the United States—as clear an example of a proportionate response to an imminent threat as can be imagined. In the present situation, the CIA's best estimate is that Iraq "will probably have a nuclear weapon during this decade."

Perhaps anticipating that some future administration might one day cite the missile crisis to justify preemptive military action, President Kennedy's own legal adviser expressly distinguished the Cuban missiles from what he called "threatening deployments or demonstrations that do not have imminent attack as their purpose or probable outcome."

CHEMICAL AND BIOLOGICAL WEAPONS

The President noted that Saddam Hussein has used chemical agents against civilian populations in his own country. This is true. It is also true that these attacks last occurred some 14 years ago—with the full knowledge of a U.S. government that did nothing to prevent them.

What is the imminent threat that such weapons might be used against the United States? The President didn't say. He said that Saddam Hussein "could decide on any given day to provide a biological or chemical weapon to a terrorist group." Indeed he could. So could any number of other nations, from Iran to North Korea.

But the historical record suggests that he can be deterred from deploying these weap-

ons. One the eve of Operation Desert Storm, Secretary of State Baker notified Iraq that any use of its weapons of mass destruction would result in a devastating American response. And the weapons were never used.

In fact, according to declassified intelligence estimates released only last night, Saddam is unlikely to initiate a chemical or biological attack against the United States unless he concludes that "U.S.-led attack could no longer be deterred." In other words, Saddam will unleash his arsenal only when he is facing annihilation—with nothing left to lose.

SUPPORT FOR TERRORISM

The President claimed that Saddam Hussein has links to international terrorism that justify a preemptive strike against his regime. What is the evidence? The President offered four arguments. First, he said that Iraq and al-Qaida "share a common enemy—the United States of America." Well, the United States and Iraq share a common enemy—Iran. But that's hardly evidence that we support Iraqi aggression.

Second, he said that the Iraqi regime "gleefully celebrated the terrorist attacks on America." This is hardly admirable, but it is also hardly evidence that they were behind the attacks. Any more than others who shared such sentiments elsewhere in the Arab world.

The President's last two arguments are more serious: that Iraq is continuing to finance terror in the Middle East and has continued to associate with leaders of al-Qaida, offering them safe harbor, medical treatment, and training in terrorist techniques. Yet assuming that these allegations are correct, they argue, not for invasion, but for treating Iraq as we treat the many other countries that provide various kinds of support for terrorism but against whom we are not making plans for war.

I do not mean to minimize these concerns. They are serious and deserve to be addressed, whether they occur in Iraq or in any other country—especially one in which internal repression, the appetite for conquest, and the possession of advanced weaponry go hand in hand.

I applaud the President's demand for immediate Iraqi compliance with Security Council resolutions. I would support a resolution that authorizes the limited use of our Armed Forces in support of international efforts to locate and dismantle Iraq's weapons of mass destruction should Iraq fail to comply.

Such a resolution would achieve the President's desire that we "tell the United Nations and all nations that America speaks with one voice."

Instead, the President insists on a resolution that goes further. That authorizes the President to "use the Armed Forces as he determines to be necessary and appropriate."

The President says that "approving this resolution does not mean that military action is imminent or unavoidable." If so, I am relieved to hear it. But if military action is imminent or unavoidable, then the broad language that would authorize it premature.

If the American people are satisfied that our cause is just and war is forced upon us, they will do what needs to be done. But before we risk the lives of our soldiers and countless innocent Iraqi civilians, before we divert untold billions of dollars from our other battles, before